

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY WISE,

Defendant-Appellant.

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UNPUBLISHED

January 13, 2005

No. 250030

Wayne Circuit Court

LC No. 03-003010-01

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of two years, four months to ten years and two to five years for assault with intent to commit murder and felon in possession of a firearm, respectively, and to a consecutive two-year term for felony firearm. He appeals as of right and we affirm but remand for the correction of the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his convictions must be reversed because his jury waiver was invalid. We disagree. We review a trial court's determination that a defendant validly waived his right to a jury trial for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997). Prior to accepting a waiver of jury, a trial court must advise the defendant in open court of the constitutional right to trial by jury. The trial court must ascertain, by addressing the defendant directly, that the defendant understands the right to trial by jury, and that the defendant voluntarily chooses to waive that right and to be tried by the court. A verbatim record must be made of the waiver proceeding. MCR 6.402(B); *People v Mosly*, 259 Mich App 90, 93; 672 NW2d 897 (2003).

Before trial, defendant indicated that he wanted to waive his right to a jury trial. The trial court addressed defendant directly, explained the mechanics of a jury trial, ascertained that defendant understood that he had an absolute right to have a jury trial, that he had discussed the waiver form with counsel, and that his decision was not prompted by any promises made to him. Defendant signed the waiver form. The trial court complied with MCR 6.402(B). The trial court's questioning was sufficient to allow it to properly ascertain that defendant understood his

right to have a jury trial, and that he voluntarily waived that right. *Leonard, supra* at 596; *People v Shields*, 200 Mich App 554, 560; 504 NW2d 711 (1993).

Defendant also argues that he is entitled to have the judgment of sentence corrected to reflect that the two-year term imposed for felony-firearm runs consecutively to the sentence for only one underlying conviction. We agree. A sentence imposed for felony-firearm must be served consecutively to and before any sentence imposed for the underlying felony and the sentence may not be served consecutively to any other sentence imposed. MCL 750.227b(2). “From the plain language of the felony-firearm statute, it is evident that the Legislature intended that a felony-firearm sentence be consecutive only to the sentence for a specific underlying felony.” *People v Clark*, 463 Mich 459, 463; 619 NW2d 538 (2000).

In the instant case, the information was worded to allow either charge to serve as the underlying felony. While the trial court properly imposed a mandatory two-year sentence for the felony-firearm conviction, it failed to specifically articulate which conviction served as the underlying felony. Accordingly, remand is necessary.

Affirmed and remanded to correct the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly